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IN THE

Supreme Court of the United States

October Term, 1955

No. ~~244~~ 5

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

EDWARD MOSK,
6305 Yucco Street,
Hollywood 28, California,
Attorney for Petitioner.

SAMUEL ROSENWEIN,
Of Counsel.

SUBJECT INDEX

PAGE

I.

Jurisdiction 1

II.

Statute involved 3

III.

Questions presented in this petition for a writ of certiorari..... 4

IV.

Statement of material facts..... 5

V.

Jurisdictional questions properly raised..... 14

VI.

Reasons why certiorari should be granted..... 15

Exhibit A. Letter dated February 8, 1954, from the State Bar to Raphael Konigsberg.....App. p. 1

TABLE OF AUTHORITIES CITED

Cases	Page
Board of Education v. Barnette, 319 U. S. 624	18
Levy, Application of, 348 U. S. 978	3, 17
Stevens, In re, 59 Cal. App. 251	18
Summers, In re, 325 U. S. 561	3, 15, 17
Thornhill v. Alabama, 310 U. S. 88	20
United Public Workers v. Mitchell, 330 U. S. 75	21
Wells, In re, 174 Cal. 467	18
Winters v. New York, 333 U. S. 507	17
Publication	
The California Eagle, May 5, 1950	16
Statutes	
California Business and Professions Code, Sec. 6060	3
California Business and Professions Code, Sec. 6064.1	3
California Business and Professions Code, Sec. 6068h	21
United States Code, Title 28, Sec. 1257	3
United States Constitution, First Amendment	4, 5, 8, 14
United States Constitution, Fifth Amendment	4, 5
United States Constitution, Fourteenth Amendment	4, 5, 15

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PETITION FOR WRIT OF CERTIORARI.

Petitioner Raphael Konigsberg respectfully prays for a Writ of Certiorari to the Supreme Court of the State of California to review the denial of the application of Raphael Konigsberg for admission to the State Bar of California.

I.

Jurisdiction.

On the 17th day of May, 1954, the Committee of Bar Examiners of the State Bar of California denied the application of Raphael Konigsberg for certification to practice law in the State of California. A copy of the letter

denying application is set forth herein and constitutes the only written "decision" in these proceedings:

"THE COMMITTEE OF BAR EXAMINERS
of the State Bar of California

May 17, 1954

To: Raphael Konigsberg, Applicant
2446 Echo Park Avenue
Los Angeles 26, California
and
Edward Mosk, Esq., Applicant's Attorney
6305 Yucca Street
Hollywood 28, California

Pursuant to your request of February 11, 1954, the record in the matter of your application for certification to the Supreme Court for admission to practice law which was before the Southern Subcommittee, has been reviewed by the entire Committee. In addition, a further hearing was held before the Committee on March 13, 1954.

It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of the good moral character required by Section 6060(c) of the State Bar Act, or (2) that you comply with the provisions of Section 6064.1 of said Act.

Your application is denied.

By order of the Committee of Bar Examiners.

/s/ GOSCOE O. FARLEY,
Goscoe O. Farley,
Secretary.

GOF:vz."

On the twenty-fourth day of July, 1954, your Petitioner filed a petition for review in the Supreme Court of the

State of California. On the 20th day of April, 1955, the Supreme Court denied his petition for review with Chief Justice Gibson and Justices Traynor and Carter voting to grant the petition. No written decision was filed by the Supreme Court.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257. The Court has heretofore granted certiorari in cases involving denial of admission to the bar.

See:

In re Summers, 325 U. S. 561 (1945);
Application of Levy, 348 U. S. 978 (1955).

II.
Statute Involved.

The basic act governing admission to the bar in the State of California is to be found in the Business and Professions Code of the State of California. The principal sections involved are Sections 6060 and 6064.1. These sections read as follows:

"Section 6060. QUALIFICATIONS FOR APPLICANTS:

"To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:

(a) Be a citizen of the United States.

(b) Be of the age of at least 21 years.

(c) Be of good moral character.

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination . . . ."

"Section 6064.1. ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED:

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, Ch. 179, Sec. 1.)"

III.

Questions Presented in This Petition for a Writ of Certiorari.

1. Does the denial of petitioner's application for admission to the Bar of the State of California by the Committee of Bar Examiners, based solely upon the newspaper articles written by the petitioner and the political, social and economic opinions allegedly held by the petitioner, constitute a denial and limitation of the free exercise of speech and thereby constitute a violation of his constitutional rights under the First and Fourteenth Amendments to the Constitution of the United States?

2. Does the denial of admission to the bar, based upon a failure to establish good moral character because of his alleged political views, constitute a deprivation of the right to follow one's calling and deprive petitioner of life, liberty, property and the pursuit of happiness, contrary to the provisions of the Fifth and Fourteenth Amendments?

3. Does the interpretation of the State Bar Act of California placing upon the applicant the burden of proof to establish that he does not "advocate the overthrow of the Government by force and violence" in the face of the affirmative testimony of the applicant that he does not so believe constitute a violation of the due process under the

Fifth and Fourteenth Amendments of the Constitution of the United States?

4. Does the denial of admission to the bar solely on the grounds of political and social views expressed by petitioner constitute a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment?

5. Does the denial of admission to the bar, based solely on alleged membership in an organization not illegal at the time of the alleged membership violate petitioner's right to assemble under the First and Fourteenth Amendments?

6. Does the State Bar Act of California as applied in the instant case by the Committee of Bar Examiners in holding that the petitioner has failed to establish his good moral character, based upon the political, economic and social views allegedly held by petitioner, constitute a violation of petitioner's rights under the First and Fourteenth Amendments to the Constitution of the United States?

IV.

Statement of Material Facts.

In establishing his good moral character before the Committee of Bar Examiners petitioner testified that he graduated from Ohio State University in 1931. After obtaining his Bachelor's Degree, he spent one year teaching American history and English literature in the high schools of Cleveland. In 1934 he entered Ohio State University for graduate work. After obtaining a Master's Degree in 1935 he was appointed Supervisor by the Department of Health of the District of Columbia. He came to Los Angeles, California, in 1936 and served variously as Assistant Director of the Research Department

of the Council of Social Agencies, as Director of Community Suryeys for the Federation of Jewish Welfare Organizations, as a District Supervisor of the California State Relief Administration, and as Director of Social Services of the City of Hope Sanitarium in Duarte, California.

The petitioner obtained the rank of Captain in the United States Army and acted as Orientation Officer for the entire Seventh Army in Germany. He served in the United States Army from October 1942 until April 1946. After discharge from the Army he returned to the City of Hope Sanitarium. In 1950 he entered the University of Southern California Law School and pursued his legal studies there continuously until his graduation in 1953.

Prior to entering law school the petitioner was a candidate for the Los Angeles City Board of Education in the elections of 1947 and 1949 and for the California State Assembly in 1950.

On the fourth day of December, 1950, the petitioner filed with the Committee of Bar Examiners of the State Bar of California his application to register as a student of law. His petition was filed in the form prescribed by the Committee of Bar Examiners and at all times he complied with all requirements of the Committee of Bar Examiners relative to the study of law in the State of California.

Just sixteen days prior to the bar examination conducted by the Committee of Bar Examiners petitioner was advised by the Southern Subcommittee of the Committee of Bar Examiners that he must personally appear before the Committee, although he was not at this time informed the purpose of this hearing. A hearing was held on the

twenty-fifth day of September at which time the petitioner was interrogated under oath by the Committee. Thereafter, and at the request of petitioner's counsel, petitioner was allowed to take the bar examination subject to further hearings to determine his fitness for admission to the bar on the basis of good moral character.

Further hearings were held before the Southern Subcommittee of the Committee of Bar Examiners on December 9, 1953 and on January 27, 1954.* On the eighth day of February, 1954, your petitioner was informed by the Southern Subcommittee of the Committee of Bar Examiners that his application for certification for admission to the bar had been denied. [A true and correct copy of this letter of denial is attached hereto as Exhibit A.]

Thereafter, your petitioner appealed to the full committee of the Committee of Bar Examiners and requested a review of the proceedings of the Southern Subcommittee. Such a hearing was held on the thirteenth day of March, 1954, and on the seventeenth day of May, 1954, petitioner received a notice that his petition for admission to the bar had been denied. (See Sec. I herein for full text of this letter.)

At the hearings the petitioner testified to his personal background and work record as summarized herein. Thereafter, the Committee members interrogated him regarding certain articles which he had written for the weekly Los Angeles newspaper, THE CALIFORNIA EAGLE. A few selected articles from the series written by the petitioner for this newspaper were introduced by the Commit-

*See the Record on Appeal for the full transcript of the hearings before the Southern Subcommittee and the full Committee of Bar Examiners.

tee. Thereafter, the balance of the articles written by him were introduced as exhibits by the petitioner himself in order to present the complete picture. [R. pp. 93-97.]

The petitioner was then asked regarding appearances before two State investigating committees, reference to both of which had been made by the petitioner in his application for permission to take the bar examination. In the course of interrogation regarding these matters the petitioner was asked by one of the members of the subcommittee:

> "I take it, Mr. Konigsberg, that the totalitarian form of government is repugnant to you."

To which the petitioner answered:

> "Very definitely." [R. p. 26.]

Thereafter, the petitioner was asked whether he was a member of the Communist Party. He declined to answer this question on the ground that it was an infringement of his rights under the First Amendment. He specifically and repeatedly stated, however, that he does not now nor has he ever advocated the overthrow of the government by force or violence. [See R. p. 96.]

The petitioner was asked [R. p. 59] whether he was a Communist, to which he answered, "I will say no, definitely no. . . . I believe strongly in the fundamental concepts of our democratic system." The committee then presented a witness, Alice King Bennett who testified that she knew the petitioner as a member of a "small unit in the Communist Party" in 1941. When asked whether she identified Mr. Konigsberg as the person whom she had known and in response to the question "Are you certain . . . of the identification," she responded that "There

is no one else here who is the least bit familiar to me in appearance except this gentleman" (referring to Mr. Konigsberg). [R. p. 64.]

Mr. Konigsberg denied that he knew Mrs. Bennett. [R. p. 57.] Then under cross-examination at a subsequent hearing, Mrs. Bennett conceded that she had been a member of a group composed exclusively of social workers and containing all social workers in the community but that Mr. Konigsberg (although a social worker at that time) was not a member of that group. [R. p. 77.] When asked: "Was anything said by any person present at any of these meetings advocating the overthrow of the government by force and violence?" [R. p. 67] Mrs. Bennett replied, "I couldn't recollect any specific statement now by anybody, including myself" and "I don't recollect anything he (Konigsberg) said at all or anybody else said." [R. p. 85.] And finally, in response to the question "Isn't it true the only reason you identified him was because he was the only person present in the room you had ever seen before?" Mrs. Bennett responded "That is right." [R. p. 87.]

At the next session of the Subcommittee and at the suggestion of the Subcommittee, the petitioner submitted letters directed to the Committee of Bar Examiners from prominent persons in the community attesting to the good moral character of the petitioner. The Committee specifically suggested that rather than bring witnesses before it, the petitioner secure communications of this sort. [R. p. 111.] Petitioner submitted letters from three practicing attorneys, nine responsible business men in the Los Angeles community, three doctors, three ministers, three professors at universities in the City of Los Angeles, eight

persons connected with various fields of social work, and six other letters by other professional persons.

Typical of the comments in these letters are:

Mrs. Dorothy Wysor Smith, Executive Secretary, Travelers Aid Society of Los Angeles, writing on March 22, 1940, at the approximate date in which the witness appearing before the Committee, Mrs. Bennett, would appear to allege the petitioner to have been a member of the Communist Party:

> "During all of the years that I have known Raphael, I have found him to be absolutely honest in the broadest sense of the word and to have a type of professional integrity which is unfortunately rare even in social workers—that type which will actually lead a person to sacrifice his position and be in danger of going hungry, rather than stain his professional honor and violate his code of ethics. . . ."

Similarly, on March 15, 1940, Gardner Bullis, then President of the Los Angeles Council of Social Agencies, wrote with regard to Konigsberg that:

> "I have come to know of you and your work and your purpose solely through my contact and our mutual service in committee work in the Council of Social Agencies. Frequently, you and I may have differed on items or practices, or even philosophy. But I have never found any occasion but to admire you and the high purposes in the intelligent grasp and efficient execution of any task set before you. . . . They could not find anyone better qualified and I would unhesitatingly 100% recommend you for any purpose which required ability and honesty and familiarity with the problems of the work you have been accomplishing. This letter is written with deep conviction and with absolutely no purpose ex-

cept an honest consideration of the highest type of public service."

And writing about his knowledge of Konigsberg during the same period of time, the Rt. Reverend Monsignor Thomas J. O'Dwyer, on December 14, 1953, wrote to the Committee of Bar Examiners:

> "I wish to advise that I was well acquainted with him between the years 1936 and 1940. During that period he was employed as a member of the staff of the Council of Social Agencies in Los Angeles. He enjoyed an excellent reputation among all who were acquainted with him during all these years. . . . I do not hesitate to recommend him to you. I am satisfied that he will measure up to the high requirements established for the members of the legal profession."

Harry I. Friedman, Assistant District Supervisor of the State Bureau of Vocational Rehabilitation, wrote to the Committee:

> "During my frequent contacts with Mr. Konigsberg, I found him to be responsible for his statements to the patients he served and to the agencies and individuals he dealt with in their behalf. He was always sincere in his efforts to better their condition and in developing programs for them, showing imagination and resourcefulness. At no time during my relationship with Mr. Konigsberg have I seen evidence of anything but excellent moral character."

Mrs. Nonette Batavia, psychiatric social worker, wrote:

> "Outstanding in my exaluation of him were his personal and professional integrity, his devotion to his work, and his interest and zealousness in conscientiously carrying out his responsibility to the clients serviced by our agency. His moral character has

always been beyond reproach, his responsibility as a family man is well established, and his feeling is extended to his community."

Mr. Joseph Esquith, of the Jewish Centers Association, wrote:

"I should like to advise that I have known Raphael Konigsberg as a social worker from 1939 until the time he left the field to study for the bar. He is a person of high moral character, straightforward and honest in his approach to all human problems, conscientious, alert, well-informed, and articulate. He was always a leader in local social work and respected by its practitioners. It is my considered opinion that Mr. Konigsberg will be a very fine attorney and a credit to the profession. I wish him every success in his new field and I am sure he will make as fine a contribution as he did to the field of social work."

A letter by Chauncy A. Alexander, of the Southern California Mental Hygiene Association, reads, in part:

"I have known Mr. Konigsberg since 1940 in his various capacities in the social work field. . . . In all the professional contacts I have had with him, he has demonstrated a high standard of integrity and ability. I have had periodic occasion to participate with him in health and welfare agency committees, and he has demonstrated a devotion to democratic principles and participation."

Rabbi Jehudah M. Cohen, Pacific Regional Director of the B'nai B'rith Hillel Foundation, writes. in part:

"I unreservedly recommend Mr. Konigsberg as a person who is morally and ethically qualified to serve as a member of the bar."

Dr. Claude Hudson, dentist and member of the Board of Directors of the Broadway Federal Savings and Loan Association, writes:

> "In his public statements and private remarks to me (while both were candidates for the Los Angeles Board of Education), I had an opportunity to observe him. During this period of time I never heard him make a statement that would make me feel that he was not a man of strong character and a believer of democracy and the American idea."

Professor Victor Netterville, instructor in law at the University of Southern California, writes that his contacts with Mr. Konigsberg were in his scholastic relationship only, but he states:

> "It was my impression that Mr. Konigsberg is a man with the courage of his convictions but not one who holds these convictions blindly or with any but the most honest motives. He seems to hold the Constitution in high esteem and is a vigorous supporter of civil rights. But it was interesting to note that despite his vigorous position, he showed a willingness to recognize the necessity from time to time of balancing the interest of the individual against the interests of society when the legislature takes action to protect society as a whole from threatened dangers. Throughout our discussions—in which there was ample opportunity to voice and advocate extreme views—Mr. Konigsberg showed a wholesome willingness to learn from others and to test the validity of his views in the competition of such discussion. He indicated to me an open mindedness, seemingly inconsistent with any calculated disregard of his duty as a loyal and conscientious citizen.
>
> "Based solely upon my contact with Mr. Konigsberg as a law student, I would have no hesitation in recommending him for admission to the Bar."

At the hearing of the full Committee, the petitioner was asked what organizations he belonged to and respectfully declined to respond on the ground that this invaded his rights under the First Amendment to the Constitution. The petitioner declined to answer other questions dealing with his opinions in the political, economic and social fields. Each declination was based upon the First Amendment and in no case did the petitioner decline to answer on the ground that the answers might be incriminatory.

The letter of the Committee of Bar Examiners to the petitioner dated May 17, 1954, denying his petition for admission to the bar of the State of California was based upon the following grounds:

> "It is the Committee's determination that you have not sustained the burden of proof (1) that you are possessed of good moral character as required by Section 6060(c) of the State Bar Act, or (2) that you complied with the provisions of Section 6064.1 of said Act."

V.

Jurisdictional Questions Properly Raised.

At all stages of the proceedings before the Committee of Bar Examiners, the petitioner raised all constitutional questions which have become the basis for this petition for a writ of certiorari. In addition, in the petition to review the denial of the application before the Supreme Court of the State of California, pages 4 and 5, the petitioner asserted all of the constitutional grounds for jurisdiction as set forth elsewhere herein.

VI.

Reasons Why Certiorari Should Be Granted.

The Supreme Court has heretofore held that a denial of the right to practice law by a state court is a judicial act and that denial may constitute a deprivation of life, liberty or property substantial enough to invoke the due process clause of the Fourteenth Amendment. In the Illinois case *In re Summers,* 325 U. S. 561, 89 L. Ed. 1795, Summers asserted a present right to admission to the bar of Illinois and upon the denial of this right by judicial order, the United States Supreme Court granted certiorari. The court held that assertion of the right to practice and its denial by judicial order of the state court constituted a case within the meaning of Article III of the Federal Constitution although it ultimately held against the petitioner.

This present Konigsberg case frames the issue of whether state authorities shall be permitted to deprive petitioner seeking to exercise his right to life, liberty and pursuit of happiness in the practice of a profession of his own choosing, by establishing such arbitrary standards and political tests as to deny admission to persons differing in substance or degree from what may be popular or accepted by the committee or the general public at any particular time.

The statutes governing the admission to the bar in California present two primary qualifications for admission to the bar. First, the applicant (assuming passage of the necessary courses of study and the bar examina-

tion about which no issue exists in the present proceeding) must establish his good moral character. The rules for admission to the bar place the burden of proof for establishing this good moral character upon the applicant. The second provision is the negative provision that the applicant must not advocate the overthrow of the government of the United States by force or violence. Nowhere in either the statute or in the rules established by the Committee of Bar Examiners does there appear a statement as to where the burden of proof of this second qualification lies.

In the Konigsberg case the committee has seen fit (and the Supreme Court of the State of California has failed to review by a four to three vote) to interpret actions by the petitioner expressing his viewpoint in the political, social and economic arena as an indication of his lack of good moral character, or, at least, as raising doubts sufficient to indicate that he has failed to meet his burden of proof of good moral character. Insofar as the second qualification is concerned, no effort was made to establish affirmatively that the petitioner Konigsberg advocated the overthrow of the government by force or violence; on the contrary, the evidence is without contradiction both by word and deed that his belief in the fundamental principles of the American democratic system is without question. Thus in an article dated May 5, 1950, petitioner wrote in THE CALIFORNIA EAGLE:

> "It is vehemently asserted that advocacy of force and violence is a danger to the American government and that its proponents should be punished. With this I agree. Such advocacy is un-American and does undermine our democratic processes. Those who preach it must be punished." [R. p. 95.]

We thus have a statute which may appear valid on its face in establishing the qualifications for membership to the bar of the State of California, but as applied by the Committee of Bar Examiners places such political tests on the applicant as to run afoul of the constitutional restrictions of the Fourteenth Amendment. See *Winters v. New York*, 333 U. S. 507, 509, where the court said:

> ". . . It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. . . ."

The Supreme Court has never passed upon the right of states to place political restrictions on the right to practice law. The case previously cited, *In re Summers*, dealt with an applicant who refused to comply with a constitutional requirement in Illinois that all persons bear arms in support of the state. There was no other political test involved in this situation other than the failure to support the Illinois Constitutional provisions. On the other hand, in the recent case of *Application of Levy*, 348 U. S. 978, the court saw fit to reverse a District Court decision denying admission to the Federal Bar in Texas based upon association with persons of suspect political leanings.

All of the cases in California heretofore interpreting the meaning of the good moral character requirement have shown that the standard of morality required here is one against which the personal actions of the particular applicant may be tested. Thus, conviction of a felony, commission of a crime, or falsification of bar application can be examined objectively and if the specific acts com-

mitted by the applicant are of a nature which go to the qualifications of an attorney, admission to the bar may be denied. (See *In re Wells*, 174 Cal. 467; *In re Stevens*, 59 Cal. App. 251.) But in the political realm and in the realm of social and economic doctrines, no such objective standard can be established or asserted other than the particular viewpoint of the group comprising the Board of Bar Examiners in the state at the time the applicant appears before them. The legislature of California has set up no political tests and if such political tests were established, it is submitted that this court would strike such tests down. By indirection, therefore, the Committee of Bar Examiners in this case establishes and writes into the laws of the state political tests for membership in the bar. It does this by the simple expedient of asking political questions and when denied answers which it has no right to have in the first place, it denies admission to the bar on the ground that good moral character has not been affirmatively established.

Such a procedure is a dangerous threat to the independence of the bar. The concepts so enshrined in our society, that every person shall have the right to select counsel of his own choosing, and that every person may select the occupation or the profession of his own choosing, are equally attacked by this doctrine. No group, no matter how high or honorable, can be given the power and authority to proscribe what is orthodox in politics or matters of opinion. (*Board of Education v. Barnette*, 319 U. S. 624.) To allow the Board of Bar Examiners to exercise this right is to give it an arbitrary power which could ultimately lead to a bar composed of persons who will conform and agree with the political, economic and social tests established by the Committee of Bar Ex-

aminers. No applicant for the bar, no student who seeks to commence his study of the law, could dare have a political, economic or social opinion for fear that at the time that he appears before the Board of Bar Examiners, his views may then be considered improper, radical or unorthodox and he be denied admission to the bar after years of formal study.

The arbitrary nature of the determination by the Committee of Bar Examiners in California is clearly pointed up by an examination of the record below. The applicant here came before the Committee with an affirmative showing of good moral character far beyond that which could be shown by the ordinary applicant for admission to the bar. A mature man of 42, the applicant presented more than thirty letters by outstanding citizens in the community who spoke in glowing terms of the loyalty, fitness and ability of the petitioner to be a member of the bar and apprised the Committee of their certainty that he would be a valuable asset to the Bar of California. The Committee saw fit to assert that with this affirmative showing, the petitioner had failed to meet his burden of proof on either (1) good moral character, or (2) that he did not advocate the overthrow of the government by force and violence.

When the Committee of Bar Examiners raises as the second reason for denial of petitioner's application that he has failed to meet his burden of proof to establish that he does not advocate the overthrow of the government by force and violence, the Committee places an arbitrary and impossible burden upon the petitioner. How can a person establish a disbelief in a concept such as advocacy of the overthrow of the government by force and violence. The petitioner established by his own testimony

that he did not believe in such a doctrine. He established by his writing that he had always opposed such a doctrine. He established by his career in the political arena and by his activities in the United States Army that his life had been dedicated to opposition of such a doctrine. In the face of this positive testimony the Committee has arbitrarily and without any evidence presented to the contrary stated that he has failed to meet his burden of proof in this respect. It is submitted that the burden of proof to establish what would otherwise be a criminal act must not fall upon the petitioner but must fall on the Committee itself. The position of the Committee places in the hands of the Committee an arbitrary power of interpretation which it has exercised arbitrarily and has thereby deprived petitioner of his Constitutional rights.

One wonders how in its essential elements this case differs from *Thornhill v. Alabama*, 310 U. S. 88, 97, where the court in discussing a somewhat different type of license but nevertheless an area in which a state authority was seeking to control who might carry on a particular livelihood within the state by use of its licensing powers, said, in part:

> "The power of the licensor against which John Milton directed his assault by his 'appeal for the liberty of unlicensed printing' is pernicious not merely by reason of the censure of the particular comments, but by reason of the threat to censure comments on matters of public opinion. It is not merely the sporadic abuse of power by the censor, but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. See *Neer v.*

Minnesota, 283 U. S. 697, 713. One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. *Lovell v. Griffin,* 303 U. S. 444; *Haque v. CIO,* 307 U. S. 496."

Petitioner is aware of decisions which have accepted loyalty standards in matters of public employment. It should be noted, however, that in this case the applicant was not seeking a job with the State Bar, he seeks to become a member of a free, untrammeled and independent bar. The restrictions which may be placed and which should be allowed in this situation are far different from those in the cases involving public employees. The lawyer has a responsibility to the state, his community and to the court "never to neglect for any consideration personal to himself, the cause of the defenseless or the oppressed." (Business and Professions Code, Sec. 6068h.) Certainly the political limitations which have been place on federal employees under the so-called Hatch Act and as defined in *United Public Workers v. Mitchell,* 330 U. S. 75, could never be sustained or allowed in the case of lawyers.

Lawyers have played a major part in the development of this country because they have maintained independence of thought and action. Lawyers can be proud of their colleagues who have risen to the defense of the unpopular, the underprivileged and the friendless. But will the legal profession continue to merit this pride? Will the legal profession continue to play its part in the future of this country if it succumbs to the hysteria of the times and

sets up standards and criteria for membership at the bar which admits only the orthodox and the conformist?

It is submitted that Raphael Konigsberg by his record of education, his lifetime of accomplishment, his established integrity and morality would conform to the highest traditions of the bar.

For these reasons the Writ should be granted.

Respectfully submitted,

EDWARD MOSK,

Attorney for Petitioner.

SAMUEL ROSENWEIN,

Of Counsel.

EXHIBIT A.

THE COMMITTEE OF BAR EXAMINERS
Of The State Bar of California

February 8, 1954

REGISTERED MAIL

To: Raphael Konigsberg
2446 Echo Park Avenue
Los Angeles 26, California

and

Edward Mosk, Esq., his Attorney
6305 Yucca Street, Room 254
Hollywood 28, California.

The Southern Subcommittee of the Committee of Bar Examiners has reviewed the record in the matter of your application for certification to the Supreme Court of this State for admission to practice law. As a general applicant you are required, among other things, to meet the requirements of Section 6060(c) of the Business and Professions Code and the Rules Regulating Admission to Practice law in California, before this Committee can take the affirmative step possessed of good moral character.

You were orally examined on September 25 and December 9, 1953, and you and your counsel appeared before the Southern Subcommittee on January 27, 1954. Newspaper articles, letters, and other documentary evidence were introduced.

It is the opinion of the Southern Subcommittee that the record in this proceeding does not warrant that it certify to the Supreme Court that you are possessed of the good moral character required.

Your application is denied.

You are entitled, in accordance with Section 5 of the Rules Regulating Admission to Practice Law in California, copy of which is enclosed, to have your application reviewed and determined by the Committee, upon filing, within ten (10) days after notification of the Subcommittee's action, a written application therefor.

For the Commission of Bar Examiners:

/s/ Alma Stayton
Alma Stayton,
Assistant Secretary.

Enclosure.